

# GROUND LEASE AGREEMENT

1/6/12

STATE OF TEXAS §§

KNOW ALL PERSONS BY THESE PRESENTS:

CITY OF CASTROVILLE §§

THIS GROUND LEASE AGREEMENT ("this Lease") is entered into this 1st day of January, 2012 ("Effective Date"), by and between the CITY OF CASTROVILLE, a Texas Municipal Corporation ("Lessor" or "the City"), as the owner of the Castroville Municipal Airport ("the Airport"), acting by and through its CITY ADMINISTRATOR, and Brask T-4 Ranch, LLC ("Lessee"), WITNESSETH :

**WHEREAS**, Lessor and Lessee are committed to the proper operation, improvement, and continued development of the Airport; and

**WHEREAS**, Lessor and Lessee deem it advantageous to themselves and to the operation of the Airport for Lessor to lease to Lessee certain real property at the Airport under the terms and conditions stated herein;

**NOW THEREFORE**, for and in consideration of the terms, considerations, and privileges promised herein, Lessor and Lessee covenant and agree as follows:

## SECTION 1. – GROUND LEASED PREMISES

A. Lessor, for and in consideration of the rents, covenants and promises herein contained to be kept, performed and observed by Lessee, and subject to the terms, conditions and considerations stated herein, does hereby lease to Lessee and Lessee does hereby accept from Lessor the following property, located at the Airport, in Medina County, Texas:

1. That certain portion of the airport known as \_\_\_\_\_, containing approximately \_\_\_\_\_ square feet of ground space, at the Castroville Municipal Airport, Castroville, Texas, as shown on the plat and diagram ("the Plat") attached hereto as Attachment A and incorporated herein (the "Premises", which, unless indicated otherwise in this Lease, shall include all Improvements (hereinafter defined) constructed thereon now or in the future, which designation shall in no way imply that the Improvements are leased by Lessor or owned by Lessor during the term of this Lease);

2. The ramp and tie-downs located directly in front on the Property, if any, located directly in front of the Hangar, leased to Lessee on an exclusive basis, solely for the purpose of aircraft ingress, egress and parking. The ramps and tied-downs are leased to Lessee in an "as is – where is" condition.

3. Subject to permitting, inspection, and approval by Medina County, Lessee shall be allowed to install a septic system on the East side of the hangar to service the improvements to be built by the Lessee.

B. As an appurtenance to the Premises, Lessor grants to Lessee a non-exclusive license to use the common areas of the Airport, as designed from time to time by Lessor, and subject to all matters contained herein and all applicable rules and regulations of the Airport or as

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promulgated by the Texas Department of Transportation and/or the Federal Aviation Administration.

## SECTION 2. – TERM:

This Lease shall be for the term of thirty (30) years commencing on the \_\_\_\_ day of \_\_\_\_\_ (the "Commencement Date"), and ending on the \_\_\_\_ day of \_\_\_\_\_ ("the Term"), except where otherwise extended or terminated pursuant to the terms of this Lease. Lessee hereby waives any notice of termination of this upon the expiration of the Term. The Lease may be extended for an additional ten (10) year period and upon similar terms with the consent of Lessee and the approval of the Castroville City Council.

## SECTION 3. – CONSIDERATION

A. In consideration for the lease of the Premises, Lessee hereby agrees to pay annually in advance (without notice or demand, both of which are hereby expressly waived), annual rent to be calculated as follows: eighteen cents (\$0.18) per square foot per year for the 19,500 square feet located on the Property, and nine cents (\$0.09) per square foot per year for the 7,150 square feet located on the ramps and tie-downs subject to this Lease. The first year's rent- in the amount of Four Thousand One Hundred Fifty Three Dollars and Fifty Cents (\$4,153.50) shall be paid in advance. Thereafter, all future payments shall be made on or before the first day of the month due for the term of this Lease plus any extensions thereto.

150' x 130'  
25' Around  
Building

**Adjustments to Rent.** Every fifth year of this Lease, the rent to be paid by Lessee shall be adjusted based on changes to the Consumer Price Index. At the beginning of each succeeding five-year period in the initial or renewal term shall be determined by multiplying the Rent paid during the first year of the initial term by a Factor determined as follows:

*"Factor" shall be determined by dividing the Current CPI-U (the CPI-U last officially published prior to the last day of the current year of the lease term) by the Base CPI-U (the CPI-U last officially published prior to the date of the commencement of the initial term of the lease), provided that Factor shall not be less than one (1).*

As used herein, "CPI-U" shall mean Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics, United States Department of Labor. The CPI-U used for rent adjustments shall be the CPI-U last officially published prior to the last day of each five-year period of the lease term (initial or renewed), as applicable, whether such CPI-U has been published on a quarterly, semi-annual, annual, monthly or other basis.

If the CPI-U is no longer officially published at the time of rental adjustments, such index will nevertheless be used for adjustment of Rent by the use of conversion tables supplied by the Bureau of Labor Statistics, U.S. Department of Labor.

If official publication of the CPI-U number that would otherwise be used pursuant to this Agreement has been delayed and not published as of the first day of the year for which the adjusted Rent is being determined, then, in the interim, until such CPI-U number is officially published, Lessee shall continue to pay the Rent as paid in the preceding year. When such CPI-

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U number is officially published, the determination shall be made as though such CPI-U had been officially published as of the first day of such year and the adjusted Rent so determined shall be applied retroactively and prospectively for the remainder of such year of the lease term.

If the applicable CPI-U is discontinued by the Bureau of Labor Statistics, or any successor thereto, and not replaced by any substantially similar Index which is convertible to the CPI-U through the use of conversion tables, then any increase in the Rent for a succeeding year of the Lease term shall be renegotiated by the parties during the thirty (30) days immediately preceding expiration of such year.

B. All rentals and other payments due from Lessee pursuant to this Lease shall be paid as the same become due, without demand, in lawful currency of the United States made payable to the Castroville Municipal Airport Fund, City of Castroville, \_\_\_\_\_, Castroville, Texas 78009.

C. In the event Lessee fails to remit any rentals or other payments due when the same are due, and such payments remain unpaid for ten (10) days after the date due, interest at the rate of ten percent (10%) per annum shall be charged by Lessor beginning on the day after the date each such payment was due and such interest shall continue to accrue against such delinquent payment until the payment plus interest is received by Lessor.

D. Additional Fees and Charges – All rentals, fees and charges payable by Lessee to Lessor under the terms of this Lease, whether or not expressly denominated as rent, shall constitute rent for all purposes, including, but not limited to purposes of the Bankruptcy Code of the United States of America. Nothing contained herein shall be taken to relieve Lessee, its customers, or others from any field use charges or other charges at the Airport which may be levied generally by Lessor, either directly or indirectly.

#### SECTION 4.- TAXES, INSURANCE AND UTILITIES

##### A. Taxes.

1. Real Estate Taxes. Despite the duration of this Agreement, the Premises will remain exempt from real property taxes pursuant to Texas Tax Code 25.07(b)(3).

2. Personal Property Taxes. Lessee agrees to pay all taxes and all other charges and assessments levied against the Lessee's personal property located on the Premises as and when the same shall become due and payable, and before any delinquency, and upon payment to furnish the paid receipt therefor to Lessor. Under no circumstances shall Lessor be liable for or be required to pay any tax or fee owed by Lessee or resulting from this Lease or Lessee's occupancy of the Premises. Lessee further agrees to annually provide Lessor with a copy of the annual personal property inventory that Lessee provides to the Medina County Appraisal District.



3. Right to Contest Taxes. Lessee may attempt to have the assessed valuation of the Premises or Lessee's personal property thereon reduced or may initiate proceedings to contest the real and/or personal property taxes. However, Lessee shall pay all costs of the proceedings. Upon the final determination of any proceeding or contest, Lessee shall immediately pay the real and/or personal property taxes due, together with all costs, charges, interest and penalties incidental to the proceedings. If Lessee does not pay the real and/or personal property taxes when due and contests such taxes, Lessee shall not be in default under this Lease for nonpayment of such taxes if Lessee deposits funds with Lessor or opens an interest bearing account reasonably acceptable to Lessor in the joint names of Lessor and Lessee. The amount of such deposit shall be sufficient to pay the real and/or personal property taxes plus a reasonable estimate of the interest, costs, charges and penalties which may accrue if Lessee's action is unsuccessful, less any applicable tax impounds previously paid by Lessee to Lessor. The deposit shall be applied to the real and/or personal property taxes due, as determined at such proceedings. The real and/or personal property taxes shall be paid under protest from such deposit if such payment under protest is necessary to prevent the Premises or Lessee's personal property from being sold under a "tax sale" or similar enforcement proceeding.

B. Insurance.


1. Lessee's financial integrity is of interest to Lessor. Therefore, Lessee shall obtain and maintain in full force and effect for the duration of this Lease and at Lessee's sole expense, insurance coverage written by companies authorized and admitted to do business in the State of Texas and otherwise acceptable to the City, which acceptance will not be unreasonably refused, in the following types and amounts, in the following types and amounts:

a. Commercial General Liability Aviation Policy. Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence.

2. Lessee agrees that with respect to the above-required insurance, all insurance contracts and Certificates of Insurance will name Lessor and its officers, employees, agents and elected representatives as additional insured's and provide for an endorsement that the "other insurance" clause shall not apply to the City where Lessor is an additional insured shown on the policy.

3. Deductibles on all insurance policies required under this Lease shall be paid by Lessee and shall be in such amounts as reasonably determined by Lessor.

4. Prior to occupancy of the Premises, Lessee shall furnish original completed Certificates of Insurance to Lessor signed by an agent authorized to bind the named underwriter and their company to the coverage, limits and termination provisions shown thereon as required herein to the Airport Manager. Lessor shall have no duty to perform under this Lease until such certificate shall have been delivered to the Lessor and no officer or employee shall have the authority to waive this requirement.



5. Lessee shall keep the insurance in full force and effect during the term of this Lease; shall notify Lessor at the office of the Airport Manager in the event of any notice of cancellation, non-renewal or material change in coverage not less than thirty (30) days prior to the effective date of change, provide a replacement Certificate in such case; and shall include a section on endorsement in the policy to the effect that such policy shall not be changed or cancelled without at least thirty (30) days prior written notice to Lessor.

6. Any personal property kept at the Premises by Lessee shall be at Lessee's sole risk and in no event shall Lessor be liable for any loss or damage to Lessee's personal property.

7. The procuring of insurance by Lessee shall not be construed to be a limitation upon Lessee's liability or as a full-performance on its part of the indemnification provisions of this Lease. Lessee's obligations are in addition to said policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities.

E. Lessee shall be responsible for payment, directly to the appropriate supplier, of all utilities including water, electricity, gas, sewers, telephone and all other utilities used on the Premises throughout the Term, including any connection fees, impact fees and late charges. Lessee shall be responsible for procuring any utility connections required by Lessee.

## **SECTION 5. – IMPROVEMENTS**

A. Lessee agrees not to make any improvements, additions or modifications (collectively, "Improvements") to the Premises without Lessor's prior written consent, which consent shall not be unreasonably withheld. Lessee agrees that Lessee shall build and maintain the ramps and tie down areas on the premises at Lessee's sole expense and for Lessee's exclusive use.

B. Lessee agrees to commence construction of the improvements, which includes the buildings and the ramps, within one (1) year of the Commence Date of this Lease.

C. Lessee agrees that he is solely responsible for the costs of all improvements contemplated or authorized by this Lease.

D. Lessee agrees that all improvements will be made with the express approval of the City Administrator or his designee, and that all improvements will comply with applicable codes, ordinances and statutes.


E. Lessee agrees that title to all improvements shall remain with Lessee until the Lease is terminated or expires, at which time title to all improvements shall pass to Lessor.



## **SECTION 6. – PERMITTED USE**

- A. Lessee agrees that the Property and Premises will be used in all manners that are lawful and consistent with the Airport operations. Lessee shall be allowed to build an office space inside the facility to be used by Lessee and persons associated with the management of Lessee's business interests.
- B. Lessee may park his and/or his employees privately owned automobiles at the Property location.
- C. Lessee may store aviation/jet fuel/oil in approved containers for all oil, fuel, solvents and other petroleum products, inside or outside near the Premises for use in their operation. Lessee shall not sell aviation/jet fuel/oil without prior written permission of and proper permitting by Lessor. Any eventual sale of aviation/jet fuel/oil shall be subject to a fuel flowage fee.
- D. Lessee shall comply with all local, state, and federal laws, rules, regulations, and ordinances in connection with its operations and occupancy of the Premises.
- E. LESSEE HAS HAD FULL OPPORTUNITY TO EXAMINE THE PREMISES AND LESSEE'S TAKING POSSESSION OF THE PREMISES SHALL BE CONCLUSIVE EVIDENCE OF LESSEE'S ACCEPTANCE THEREOF IN AN "AS IS" CONDITION, AND LESSEE HEREBY ACCEPTS THE PREMISES IN ITS PRESENT CONDITION AS SUITABLE FOR THE PURPOSE FOR WHICH LEASED. LESSEE AGREES THAT NO REPRESENTATIONS RESPECTING THE CONDITION OF THE PREMISES AND NO PROMISES TO IMPROVE THE PREMISES, EITHER BEFORE OR AFTER THE EXECUTION HEREOF, HAVE BEEN MADE BY LESSOR OR ITS AGENTS TO LESSEE UNLESS THE SAME ARE CONTAINED HEREIN OR MADE A PART HEREOF BY SPECIFIC REFERENCE HEREIN AND, LESSOR SHALL HAVE NO RESPONSIBILITY FOR THE MAINTENANCE OR REPAIR OF THE PREMISES OR ANY IMPROVEMENT THEREON.
- F. Lessee shall be allowed to erect a sign on the Property related to Lessee's use of the Property with written consent of the Airport Manager. Said consent shall not be unreasonably withheld or delayed.
- G. Lessee agrees that Lessee will, at all times, keep the Premises, including the inside and the outside of any Improvements, clean and free of trash, litter, tall grass, weeds, junked automobiles, and scrap aircraft parts.

## **SECTION 7. – RESTRICTED USE & MAINTENANCE**

- A. Lessee shall, throughout the term of this Lease and any extension thereof, assume the entire responsibility, cost and expense, for all repair and maintenance of the Property and all buildings and improvements thereon, whether such repair or maintenance be ordinary, extraordinary, structural or otherwise. Additionally, without limiting the foregoing, Lessee shall:
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1. At all times maintain the buildings and improvements in a good state of repair and preservation, excepting ordinary wear and tear and obsolescence in spite of repair; and replace or substitute any fixtures and equipment which have become inadequate, obsolete, worn out, unsuitable or undesirable, with replacement or substitute fixtures and equipment, free of all liens and encumbrances, which shall automatically become a part of the buildings and improvements; and at all times to keep the Property, its buildings, improvements, fixtures, equipment and personal property, in a clean and orderly condition and appearance; and observe all insurance regulations and requirements concerning the use and condition of the Property, for the purpose of reducing fire hazards and insurance rates at the Airport; and
2. Repair any damage, caused by Lessee or his agents, to paving or other surfaces of the Property or the Airport, in connection with the scope of the Lease, caused by any oil, gasoline, grease, lubricants, flammable liquids and/or substances having a corrosive or detrimental effect thereon; and
3. Be responsible for the maintenance and repair of all utility service lines upon the Lease Premises, including but not limited to, water and gas lines, electric power and telephone conduits and lines, sanitary sewers and storm sewers; and
4. Keep and maintain all vehicles and equipment operated by lessee on the Airport in safe condition, good repair and insured, as required by this Lease; and
5. Replace broken or cracked plate glass and paint/repaint structures upon the Property as needed; and
6. Provide and use suitable receptacles for all garbage, trash, and other refuse; and
  - a. Supply a sufficient number of fire extinguishers of acceptable size as determined by the local fire marshal, state, federal, and local law, rule, regulation, or ordinance inside the Improvements. Such fire extinguisher(s) shall be readily accessible in the event of a fire. Lessee is responsible for yearly certification of fire extinguishers.

The adequacy of the performance of the foregoing maintenance and repair by Lessee shall be determined by the Airport Manager, whose reasonable judgment shall be conclusive. Should Lessee refuse or neglect to undertake any such maintenance or repair, or if Lessor is required to perform any maintenance or repair necessitated by the negligent acts or omissions of Lessee, its employees, agents, assignees, subtenants, or licensees, then Lessor shall have the right, but not the obligation, to perform such maintenance or repair on behalf of and for Lessee. The costs of such maintenance or repair, plus any associated overhead reasonably determined by Lessor, shall be reimbursed by Lessee to Lessor no later than ten (10) days following receipt by Lessee of written demand from Lessor for same. In cases not involving maintenance or repair requiring exigent action, Lessor shall provide Lessee a written request that Lessee perform such maintenance or repair, at least thirty (30) days before Lessor effects such maintenance or repair on behalf of Lessee.

B. Lessee shall not use the Premises for any unlawful purpose or cause, permit, suffer, or create any waste, damages, injury, nuisance, easement upon any portion of the Premises.

C. Liens Prohibited – Lessee shall not suffer or permit any tax, judgment, mechanics or materialmen's lien or other liens to be filed against the fee of the Premises nor against Lessee's leasehold interest in the land nor any Improvements by reason of any work, labor, services, or materials supplied or claimed to have been supplied to Lessee or to anyone holding the Premises or any part thereof through or under Lessee. If any such liens shall be recorded against the Premises or any Improvements thereof, Lessee shall cause the same to be immediately removed or, in the alternative, if Lessee, in good faith desires to contest same, Lessee shall be privileged to do so, but in such case Lessee hereby agrees to INDEMNIFY AND SAVE LESSOR HARMLESS from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to the execution of such judgment.

## **SECTION 8. – CONDITIONS OF DEFAULT AND REMEDIES**

A. Each of the following shall constitute an event of default by Lessee:

1. Lessee shall fail to pay any rent (monthly rent or additional rent) or any other charges as provided for in this Lease and such failure shall continue for a period of ten (10) days after the date written notice is received by Lessee that said payment is past due.
2. Lessee shall neglect or fail to perform or observe any of the terms, provisions, conditions or covenants herein contained and on Lessee's part to be performed or any way observed, other than non-payment of rent and other charges, and if such neglect or failure should continue for a period of thirty (30) days after delivery to Lessee of written notice of such neglect or failure.
3. Lessee shall voluntarily discontinue its operations or aeronautical activity at the Airport for a period of ninety (90) consecutive days.
4. An Order of Relief shall be entered, at the request of Lessee or any of its creditors, under federal bankruptcy, reorganization laws or any law or statute of the United State or any state thereof.
5. Lessee shall become insolvent, take the benefit of any present or future insolvency statute, make a general assignment for the benefit of creditors; file a voluntary petition in bankruptcy or a petition or answer seeking a reorganization or the readjustment of its indebtedness, under the federal bankruptcy laws, or under any other law or statute of the United State or of any state thereof; or consent to the appointment of a receiver, trustee or liquidator or all or substantially all of its property.
6. Lessee shall become a corporation in dissolution or voluntarily or involuntarily forfeit its corporate charter.



7. Lessee shall have been found to have violated any applicable federal, state, or local rules or regulations concerning fuel storage facilities, including but not limited to the Environmental Protection Agency, the Texas Commission on Environmental Quality, or the City of Castroville.

8. Lessee shall assign this Lease without the prior consent of Lessor.


9. Lessee shall fail to provide or maintain insurance as provide for in this Lease and such failure shall continue for a period of five (5) days after receipt by Lessee of written notice hereof provided, however, that Lessee shall not be entitled to any notice from Lessor under this provision when failure to maintain insurance is due to a cancellation or expiration of policy or coverage.

B. Lessor's Election to Terminate Lease or to Repossess and Continue to Collect Rent - In the event any condition of default itemized in Section 8A(1) through (9) above occurs, Lessor, then, or at any time thereafter, but prior to the removal of such condition of default shall have the right, at its election, either to terminate this Lease by giving at least thirty (30) days written notice to Lessee at which time Lessee will then quit and surrender the Premises to Lessor. Upon termination by default by Lessee, the maximum liability Lessee shall be responsible for will be the amount of the remaining rent due in the year in which the contract is terminated.

C. Repossession not a Termination of Lease - Lessor's repossession of the Premises shall not be construed as an election to terminate this Lease nor shall it cause a forfeiture of rents or other charges remaining to be paid during the balance of the term hereof, unless a written notice of such intention be given to Lessee, or unless such termination is decreed by a court of competent jurisdiction.

D. Election to Relet Premises Upon Repossession - Upon repossession, Lessor shall have the right (at its election and whether or not this Lease shall be terminated) to relet the Premises or any part thereof for such period or periods (which may extend beyond the term of this Lease) at such rent or rent and upon such other terms and conditions as Lessor may, in good faith, deem advisable. Notwithstanding any law or anything contained herein to the contrary, to the full extent permitted under applicable law, Lessee and Lessor agree that Lessor's duty to relet the Premises or otherwise to mitigate damages under this Lease shall be limited to those requirements set forth in the Texas Property Code, as amended. Lessor shall in no event be liable and Lessee's liability shall not be affected or diminished in any way whatsoever for failure to relet the Premises, or in the event the Premises are relet, for failure to collect any rental under such reletting. Lessor and Lessee agree that any duty to mitigate or to use objectively reasonable standards in reletting the Premises, although not required, shall be satisfied and Lessor shall be deemed to have used objectively reasonable efforts to relet the Premises by posting a "For Lease" sign on the Premises and contacting at least one real estate agent or broker regarding this Lease.

E. Application of Proceeds Upon Reletting - In the event that Lessor shall elect to relet, then rentals received by Lessor from such reletting shall be applied: first, to the payment of any indebtedness other than rent due hereunder from Lessee to Lessor under this Lease, second, to the payment of any cost of such reletting, including but not limited to broker's commissions and the cost of modifying or altering the Premises as reasonably required to relet the Premises;



third, to the payment of rent due and unpaid hereunder; and the residue, if any, shall be held by Lessor and applied hereunder. Should that portion of such rentals received from such reletting during any month, which is applied to the payment of rent hereunder, be less than the rent payable during that month by Lessee hereunder then Lessee shall pay such deficiency to Lessor. Such deficiency shall be calculated and paid monthly. Lessee shall also pay to Lessor, as soon as ascertained, any costs and expenses incurred by Lessor in such reletting not covered by the rentals received from such reletting of the Premises. Nothing contained herein shall prevent Lessor from maintaining an action at law for damages in the absence of reletting, or to sue for rent as it becomes due.

F. Election to Store or Sell Personal Property Upon Termination or Repossession -If Lessor shall terminate this Lease or take possession of the Premises by reason of a condition of default, Lessee and those holding under Lessee, shall forthwith immediately remove their goods and effects from the Premises. If Lessee or any such claimant shall fail to effect such removal immediately, Lessor may, without notice or liability to Lessee or those claiming under Lessee, remove such goods and effects and may store the same for the account of Lessee or of the owner thereof at any place selected by Lessor, or, at Lessor's election, and upon giving 15 days written notice to Lessee of the date, time and location of sale, Lessor may sell the same at public auction or private sale on such terms and conditions as to price and payment, and otherwise as Lessor in its sole discretion may deem advisable. If, in Lessor's judgment, the cost of removing and storing or the cost of removing and selling any such goods and effects exceeds the value thereof or the probable sale price thereof, as the case may be, Lessor shall have the right to dispose of such goods in any manner Lessor may deem advisable.

G. Lessee Responsible for Costs - Lessee shall be responsible for all costs of removal, storage and sale of any personal property left on the Premises, and Lessor shall have the right to reimburse the City's funds from the proceeds of any sale for all such costs paid or incurred by Lessor. If any surplus sale proceeds remain after such reimbursement, Lessor may deduct from such surplus any other sum due to Lessor hereunder or at law and shall pay over to Lessee any remaining balance of such surplus sale proceeds.

## **SECTION 9. – TERMINATION**

A. This Lease may be prematurely terminated by mutual agreement and consent of both parties in writing. Such termination by mutual agreement shall cause both Lessor and Lessee to be free of any and all requirements of this Lease, except those obligations reasonably construed to survive termination of this Lease, and neither Lessor nor Lessee shall have any derogatory remarks or entries made upon their resumes or upon any public or private records which would indicate failure to successfully fulfill the conditions of this Lease.

B. At the termination of this Lease, either by normal expirations, premature termination, or mutual agreement, Lessee shall peaceably vacate the Premises and turn over possession of the Improvements to Lessor. Should Lessee be in default of any monies owed to Lessor, Lessor may take possession of any personal property owned by Lessee and located at the Airport and hold such in storage until the amount owed is paid, including any moving or storage costs incurred. Lessor may liquidate any personal property so seized pursuant to Lessor's lien pursuant to the requirements of law. Lessee shall be liable for any and all costs and expenses incurred by Lessor in any action taken pursuant to this Lease or in order to enforce Lessor's

legal rights in relation hereto if Lessee is in default of the lease.

C. At the sole election of Lessor, any items of personal property that are not removed from the Premises by Lessee no later than thirty (30) days after the expiration of the term of this Lease shall thereafter belong to Lessor without the payment of any consideration therefore or the necessity of any judicial proceeding.

#### **SECTION 10. – INDEMNIFICATION**

A. Lessee covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, attorney's fees, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to Lessee's activities under this Lease, Lessee's business, operation, occupancy, or use of the Premises and/or Airport, including any acts or omissions of Lessee, any agent, officer, director, representative, employee, consultant or subcontractor of Lessee and their respective officers, agents, employees, directors and representatives, all without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Lessee shall promptly advise the City in writing of any claim or demand against the City or Lessee known to Lessee related to or arising out of Lessee's activities under this Lease and shall see to the investigation and defense of such claim or demand at Lessee's sole cost. The City shall have the right, at its own expense, to participate in such defense without relieving Lessee of any of its obligations under this Section 10.

B. It is expressly understood and agreed that the relationship between Lessor and Lessee is solely a ground landlord/ground tenant relationship, Lessee is solely responsible for his respective acts and omissions, and that Lessor shall in no way be responsible therefore, and that neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other. Nothing contained herein shall be deemed or construed by the parties hereto or by any third party, as creating the relationship of employer-employee, principal-agent, partner, joint venture, or any other similar such relationship between the parties hereto.

**SECTION 11. – MAINTENANCE OF LANDING AREA:** Lessee understands and agrees that Lessor shall maintain the Airport to at least the minimum standards as recommended by the FAA and/or the Texas Department of Transportation. Such right includes the right to maintain and keep in repair all public use areas at the Airport and the right to direct and control all activities as necessary at the Airport.

**SECTION 12. – SUBORDINATION OF LEASE:** This Lease shall be subordinate to the provisions of any existing or future agreement between Lessor and the United States of America or the Federal Aviation Administration relative to the use, operation or maintenance

of the Airport, the execution of which has been or may be required as a condition to the conveyance of the Airport to Lessor and a condition precedent to the expenditure of Federal funds for the development of the Airport. Should the effect of such agreement be to take any of the Premises under this Lease, Lessor shall not be held liable therefore, but, in such event, Lessee may cancel this Lease upon ten days' written notice to Lessor. Lessee may pursue any claim it may have against the United States government or the Federal Aviation Administration in such event.

**SECTION 13. – LANDLORD'S LIEN:** Lessee hereby gives to Lessor a lien and security interest upon the improvements Lessee builds, now, or at any time hereafter placed upon the said Premises, to secure the prompt payment of the rent and other charges stipulated herein to be paid; all exemptions of such property, or any of it, being hereby waived. Lessor agrees that the lien and security interest herein shall be subordinate to the lien or security interest of a lender providing purchasing money financing for such property. Nothing contained herein shall be deemed to grant Lessor a lien or security interest in any aircraft regardless of whether such aircraft are placed in or upon the said Premises at any time.

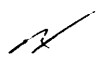
**SECTION 14. – ATTORNEY'S FEES:** Any party who brings any action under this Lease, and prevails in said action, then that party shall be entitled to recover from the other its reasonable attorney's fees.

**SECTION 15. – NO ASSIGNMENT:** Lessee shall not sell, transfer, assign or sublet this Lease, Lessee's interest in or to the Premises or any part thereof, or any Improvements installed by Lessee without having first obtained the prior written consent of Lessor signed by the City Administrator. In the event that Lessee desires to sell any Improvements installed on the Premises, Lessor shall have the right of first refusal to purchase such Improvements, provided that the right of first refusal must be exercised within twenty one (21) days; should Lessee receive a bond fide offer to purchase Improvements from a third party, purchase by Lessor must be on substantially similar terms as those offered by the third party.

**SECTION 16. – WAR AND NATIONAL EMERGENCIES:** During time of war or national emergency, Lessor shall have the right to lease the Airport or any part thereof to the United States for government use, and if the United States government so leases the Airport or any part thereof, the provisions of this Lease, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended. Rent shall be abated to the extent and for as long as such actions render the Premises untenable, but Lessor shall in no event be liable for damages to Lessee. Lessee may pursue any claim it may have against the United States government or the Federal Aviation Administration in such event.

**SECTION 17. – LESSOR ACCESS:** Lessor or its agents may enter the Premises at all reasonable times to show the Premises to potential buyers, investors or lessees or other parties, or for any other purpose Lessor deems necessary.

**SECTION 18. – QUIET ENJOYMENT:** Lessor covenants that as long as Lessee pays the rent and other charges under this Lease and observes the covenants and terms of this Lease, Lessee will lawfully and quietly hold, occupy, and enjoy the Premises during the Term without being disturbed by Lessor or any person claiming under Lessor, except for any portion of the Premises that is taken under the power of eminent domain, pursuant to the Federal



Government's right to reclaim the Airport or Premises or pursuant to the Lessor's right to diminish or terminate its Airport operations.

**SECTION 19. – MISCELLANEOUS PROVISIONS**

A. This Lease embraces the entire agreement of the parties hereto pertaining to the Premises and no statement, remark, agreement, or understanding, either oral or written, not contained herein shall be recognized or enforced as it pertains to the lease and/or license of the Property, except that this Lease may be modified by written addendum agreed to and signed by all parties and attached hereto.

B. For the purpose of this Lease, the singular number shall include the plural and the masculine shall include feminine and vise-versa, whenever the context so admits or requires.

C. The "Section" captions and heading are inserted solely for the convenience of reference and are not part of nor intended to govern, limit, or aid in the construction of any provision hereof.

D. The parties to this Lease hereby acknowledge and agree that they are the principals to the Lease and have the power, right, and authority to enter into this Lease and are not acting as an agent for the benefit of any third party; except the parties to this Lease.

E. This Lease shall be governed by the laws of the State of Texas and construed thereunder and venue of any action brought under this Lease shall be in Medina County, Texas.

F. If any section, paragraph, sentence, or phrase entered in this Lease is held to be illegal or unenforceable by a court of competent jurisdiction, such illegality or unenforceability shall not affect the remainder of this Lease and, to this end, the provisions of this Lease are declared to be severable.


G. Nothing in this Lease is intended to or shall have the effect of waiving any privileges or immunities afforded Lessor under Texas State law including, but not limited to, sovereign immunity or official immunity, and it is expressly agreed that the Lessor retains such privileges.

*Remainder of page intentionally left blank*



**EXECUTED** on the day first set forth hereinabove.

LESSOR: CITY OF CASTROVILLE

  
Paul Hofmann, City Administrator  
City of Castroville

LESSEE: BRASK T-4 RANCH, LLC

By: D. J. Brask

Printed Name: DJ BRASK

Title: Pres.

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

ATTEST:

  
\_\_\_\_\_  
CITY SECRETARY

Attachments

Attachment A – Plat

**BRASK T-4 RANCH LLC**

P.O. BOX 55287  
HOUSTON, TX 77255  
800-848-8805

DATE	INVOICE	AMOUNT

88-2481-1149

0139

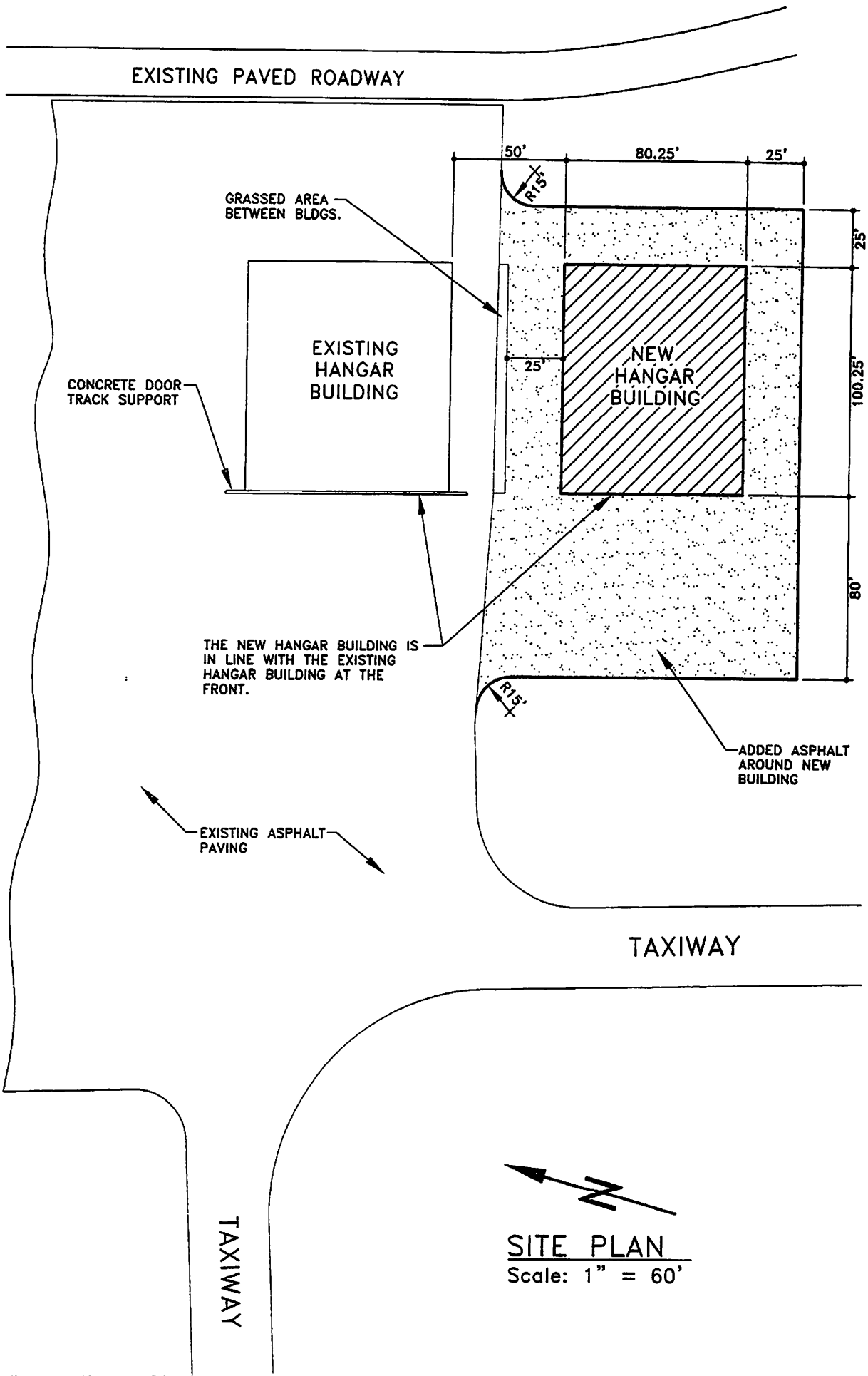
PAY Four thousand one hundred fifty three <sup>50/100</sup> DOLLARS

CHECK NO.	TO THE ORDER OF	DATE	GROSS AMOUNT	DISCOUNT	CHECK AMOUNT
0139	City of Castroville	12/19/11			4153.50

VOID AFTER 120 DAYS

Texas Community Bank, N.A.  
6721 McPherson Road Laredo, Texas 78041

⑈000139⑈ ⑆114924810⑆ ⑈1010025312⑈



Owner D. J. Brask  
Brask T-4 Ranches, LLC

Drawn by: Stephen A. Mangold

Location See sheet #1

Drawing No. 700-256



**MANGOLD Engineering Company**  
5596 CR 5710  
Devine, TX 78016  
Phone: (830) 931-0400

FIRM NO. 5549

Date: 12/22/11

Scale: Noted

Sheet 1 of 3

